

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

JOHN A. VEASY,

Plaintiff,

v.

TEACH FOR AMERICA, INC.,

Defendant.

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Case No. 3:11-cv-01179

Jury Demand

Judge Trauger

DEFENDANT TEACH FOR AMERICA, INC.’S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Teach for America, Inc. (“TFA”) respectfully moves the Court for dismissal of the Amended Complaint brought by Plaintiff John A. Veasy (“Plaintiff”). As grounds for this motion, TFA states as follows:

1. Plaintiff applied to become a TFA Corps Member in November 2008. Although he made it to the final stage of the highly-competitive selection process, Plaintiff’s application was ultimately rejected. Because he was not selected to become a Corps Member, Plaintiff has now filed this action against TFA, alleging age discrimination under the Age Discrimination in Employment Act, 29 U.S.C § 621 *et seq.* (“ADEA”) and race discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (“Title VII”). Plaintiff’s claims fail as a matter of law.

2. First, Plaintiff has failed to satisfy the *Twombly* pleading standard required to survive a Rule 12(b)(6) motion to dismiss. “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (*quoting Bell Atl. Corp.*

v. Twombly, 550 U.S. 544, 570 (2007)). Here, Plaintiff fails to allege a single fact supporting his conclusion that TFA discriminated against him on the basis of his age and/or race. Though he references an age-based comment allegedly made by someone at the final interview site, Plaintiff provides no further factual details about the identity of this female, and significantly, he does not say that she is a TFA employee. *See* Am. Compl. at ¶ 12. Additionally, Plaintiff fails to identify similarly-situated individuals that were treated differently than him on the basis of age or race. *See id.* at ¶¶ 9, 12, 17. From the facts as pled in the Amended Complaint, the Court cannot make a reasonable inference that TFA has discriminated against Plaintiff. Accordingly, the Amended Complaint must be dismissed for failure to state a claim upon which relief can be granted.

3. In the alternative, Plaintiff's claim under the ADEA must be dismissed for failure to state a claim. Under the ADEA, it is unlawful for an "employer" or an "employment agency" to discriminate against any individual on the basis of that individual's age. 29 U.S.C. § 623(a)–(b). Where a defendant is not a plaintiff's direct employer, as here, that defendant cannot be liable under the ADEA unless it has sufficient control over the employing entity's employees, particularly with respect to the essential terms and conditions of the employment (e.g., hiring, firing, setting work schedules, and controlling employee compensation). *See Swallows v. Barnes & Noble Book Stores, Inc.*, 128 F.3d 990, 993 n.4 (6th Cir. 1997). Further, to be considered an "employment agency" under the ADEA, an entity must procure employees for an employer. 29 U.S.C. § 630(c). As a matter of law, TFA is neither Plaintiff's "employer" nor an "employment agency" under the ADEA. 29 U.S.C. § 630(b)–(c). Accordingly, Plaintiff's ADEA claim must be dismissed.

In support of its Motion, TFA submits the Declaration of Bradley Leon, attached hereto as Exhibit A. TFA also relies upon its Memorandum of Facts and Law in Support of its Motion to Dismiss, which is filed contemporaneously herewith.

WHEREFORE, Defendant Teach for America, Inc. respectfully requests that the Court grant its Motion to Dismiss, dismiss Plaintiff's Amended Complaint in its entirety, award it reasonable costs and fees, and award it any further relief that the Court deems just and necessary.

Respectfully submitted,

s/ Martha L. Boyd

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Attorneys for Teach for America, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via the Court's ECF System to:

James L. Harris
Robert J. Shockey
Attorney at Law
2400 Crestmoor Road
Nashville, Tennessee 37215

on this the 23rd day of March, 2012.

s/ Martha L. Boyd

Martha L. Boyd